

Citizens' Guide to Small Claims Court

IN BUREAU COUNTY, ILLINOIS

This general outline of procedure in
filing Small Claim Suits in Bureau County,
is provided to give you a better understanding
of the Small Claims Court.

MICHAEL L. MIROUX

Clerk of the Circuit Court
Bureau County
702 S. Main Street
Princeton, Illinois 61356
Telephone (815) 872-2001, Lxt. 225
Fax (815) 872-0027

WHAT IS A SMALL CLAIM CASE?

A case where a person (called the Plaintiff) files suit against another (called Defendant), for an amount of money not in excess of \$5,000.00. This may be for non-payment on an open account, wages, damages to an automobile, etc., or for any reason where the Plaintiff believes the Defendant to be indebted to him and Defendant has refused to pay. The purpose of the Small Claims Court is to allow individuals to collect from a debtor, by presenting their own case in Court, which in most instances, eliminates the need of hiring an attorney. Of course, any party may be represented by an attorney.

HOW DO I COMMENCE A SMALL CLAIMS ACTION?

1. Go to the Office of the Clerk of the Court, Courthouse, Princeton, Illinois, and request Small Claim Forms.
2. You will be given the necessary forms. Fill them out carefully, and return them to the Clerk, who will assign a case number, and fix an "appearance date" (time, date and Courtroom number, where the Plaintiff and Defendant shall first appear in Court), on the Summons to be issued and served upon the Defendant. The Plaintiff must advance a nominal filing fee at the time of filing of the case.
3. Summons may be served upon the Defendant, either by Certified Mail or by the Sheriff of Bureau County, if the Defendant resides in Bureau County. If the Defendant resides in another County, Summons must be served by the Sheriff of that County. The Clerk will explain the option of service in Bureau County.
4. If Summons is served by the Sheriff, you will be billed for the service on Defendant, and this must be paid before you appear in Court.
5. The Judge cannot discuss the case with the parties prior to trial, nor will he discuss it with you after a decision has been rendered. The Judge and the Clerk or his Staff are prohibited from offering any legal advice about the case. **If you** feel it necessary to have legal advice, you should

consult an attorney about handling the case.

DO I NEED AN ATTORNEY IN A SMALL CLAIMS CASE?

No, but if you plan to have one, you should hire him before the trial date. Be sure to give him enough time to properly prepare your case. A "continuance" (delay in the proceedings) will not be allowed unless for good reason. If you plan to have a jury trial, then it would be to your advantage to have a lawyer. **Plaintiff corporations must have an attorney.** Defendant corporations may defend through an officer, director, manager, department manager or supervisor of the corporation.

CAN I HAVE A JURY TRIAL?

Yes, but there are a few facts you should know before you demand a trial by jury:

1. A jury trial takes much more time than a "bench trial" (trial before a Judge).
2. A bench trial is more informal than a jury trial, so you are at less of a disadvantage at a bench trial if you do not know legal procedure.
3. You must be able to select your own jury (with the concurrence of the Defendant).
4. The person asking for the jury trial must pay an additional fee for the jury.
5. Each party must prepare and submit written jury instructions.
6. If you do not have an attorney, you will be expected to handle your own case in much the same way as a lawyer would handle it for you.
7. In most instances, a person without legal training lacks the experience and knowledge to conduct a jury trial, therefore a jury trial may actually put him to a disadvantage.

WHAT DO I DO WHEN I GET TO COURT?

1. **Be polite and courteous.** If Summons has been properly served upon Defendant, and Defendant fails to appear, or if he appears and admits he owes the amount claimed, the Court will give the Plaintiff a Judgment (a decision and order of Court that Defendant owes Plaintiff the amount claimed.)
2. If the Defendant appears and denies he owes the amount claimed by Plaintiff, the case will be set down for trial at another time.
3. When you appear for trial you should have any witnesses you plan to call on your behalf, together with any papers, records or other documents you want the Judge to see, which are pertinent to your case.
4. At the beginning of the trial, first the plaintiff, then the defendant, may make an "opening statement" (a short statement of what they think the evidence will show).
5. After opening statements, the plaintiff will call his witnesses to the witness stand. The court will place the witness under oath, and the plaintiff will ask him questions on "direct examination" (questioning by the side calling the witness). The plaintiff may testify, and he can also require the defendant to testify.
6. After the plaintiff has questioned all of his witnesses and is finished with his side of the case, then the defendant calls all of his witnesses. The defendant has a right to testify, and he can also require the plaintiff to testify as a witness.
 - (a) Remember that the testimony of the witnesses should be in great detail. Your first question will be to ask the witness his name and address. You know what happened, the Judge does not. Even though you have a good case, unless you can relate to the Judge what actually happened, you may lose. It may help you to write out the questions you plan to ask your witnesses before the trial.
7. After each witness has completed his testimony on direct examination, he may be "cross-exam-

ined" by the other side.

- (a) Cross-examination is where the other side questions a witness.
 - (b) When you cross-examine a witness, you should not argue with him or make a statement about his testimony, but only question him about what he has previously testified to on direct examination. Taking notes during the direct examination of a witness, may later help you during your questioning on cross-examination.
8. After the court has heard all the witnesses, first the plaintiff, then the defendant, may make a "closing argument" (where each side sums up his case and tells the Judge what they think the evidence proved).
 9. The plaintiff must prove his case by the "greater weight of evidence" if he is to win his case.

WHAT HAPPENS AFTER THE TRIAL IS OVER?

1. After the Court has heard the closing arguments, the Judge will make a decision and enter judgment for either the Plaintiff or Defendant. The loser pays all Court costs.
2. If you are disappointed with the outcome, you should be careful not to make any remark or statement which **could result in your being held in Contempt of Court.**
3. **If the judgment is in favor of the Plaintiff, the Defendant should arrange to pay the amount of judgment plus Court costs. In the event the Defendant is unable to pay immediately, it can be arranged to be paid in installments, weekly, monthly, etc., until paid in full.**
4. **If the Defendant fails or refuses to pay the**

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judgment, the Plaintiff may use other recourses to collect. The one most commonly used in Bureau County, is "Citation to Discover Assets"

CAN I APPEAL THE DECISION OF THE COURT?

Yes, but you must file a written Notice of Appeal within thirty (30) days after entry of the judgment. You must also send the other side, a copy of the Notice.

WHAT IS A CITATION TO DISCOVER ASSETS?

- I. It is a demand by the plaintiff for the defendant to appear in Court to determine his ability to pay the judgment.
2. If the defendant fails to pay the judgment within a reasonable time, the plaintiff may go to the office of the Clerk of the Court and request a Citation to Discover Assets form, which the Plaintiff will fill out and return to the Clerk, who shall fix a date for Hearing on the Citation.
3. The Citation may be served by Certified Mail or by the Sheriff of Bureau County, if the defendant resides in Bureau County, or by the Sheriff in the County of defendant's residence. The plaintiff must obtain personal service upon the defendant in Citation proceedings, therefore, it is suggested that you have the Sheriff serve the Citation, to avoid repeat Court appearances.
4. If the defendant is properly served and appears in Court, he will be placed under oath, and the plaintiff may question him, as to his income and liabilities, which will enable the Court to determine his ability to pay the judgment. If the defendant fails to appear in Court without good reason, the

Court will take appropriate action.

5. The Court will determine whether the defendant shall pay the judgment in full at time of Hearing, or if he shall pay in installments, weekly, monthly, etc. The Court may determine that the defendant is without sufficient funds at the time to pay anything on the judgment, in which case, the proceedings would be continued for a reasonable time, and the defendant would again appear in Court, to allow the Court to decide if there has been a change in the defendant's circumstances and ability to pay-
6. If the defendant fails to pay the judgment in accordance with the Order of the Court, the Plaintiff may file a Petition for Rule on the Defendant to Show Cause why he did not comply with the Order, and after a Hearing, the defendant may be found to be in Contempt of Court, which could result in a possible jail sentence or fine, or both, to be imposed upon the defendant.

SUMMARY IN BRIEF

This booklet is a general outline of procedures an individual should expect to follow when filing a Small Claim in Bureau County, Circuit Court. These steps will apply to most cases. However, there will be instances where some variation may apply, particularly in the area of collecting a judgment which may have been entered against a defendant. The Clerk and his Staff, will render as much assistance as possible to you, by offering certain suggestions, and providing the necessary forms to you, in your effort to collect from a debtor. Please remember, as stated earlier in this booklet, that the Clerk of the Court, members of his Staff, or any of the Judges, are prohibited from offering you legal advice. If you believe your case has technical legal aspects, it may be to your advantage to hire an attorney.